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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/963,933	09/25/2001	Lung Tran	10019196--1	1295

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EXAMINER

MONDT, JOHANNES P

ART UNIT PAPER NUMBER

2826

DATE MAILED: 02/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/963,933

Applicant(s)

TRAN ET AL.

Examiner

Johannes P Mondt

Art Unit

2826

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 February 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1-12 and 18-22

Claim(s) withdrawn from consideration: _____

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

Continuation of 5. does NOT place the application in condition for allowance because: Applicant's traverse of the rejections under 103(a) of claims 1-6 and 10-11 as being unpatentable over Parkin in view of Lin is unpersuasive. In particular, Applicant alleges that the rejection is self-contradictory in that the examiner contends that columns 1-2 in Parkin suggest a reference layer that "can be pinned or unpinned" while stating that Parkin does not necessarily teach the reference "to be unpinned". However, there is a difference between "can be" and "to be", and hence there is no contradiction. The specific teaching of reference layers is by Lin et al (see column 1, lines 34-44; and column 5, lines 7-17) and not from Parkin, and hence the rejection is not a 102 rejection but a 103 rejection, as the heading indicates. As for analogous art, the memory device functions include reading and writing, the former being the focus of Lin and therefore the examiner maintains that Parkin and Lin constitute analogous art. That the statement by Lin would apply too broadly to all reference layers rather than being focused on the specific reference layer by Parkin overestimates the specificity of the nature of the reference layer by Parkin: except possibly for the tunnel junction device aspect, which is a matter of scale in the direction of thickness, the devices are structurally the same. The examiner has cited the motivation verbatim from Lin "... for sensing the resistance of the sense layer". Therefore, the examiner believes that no further motivation-related citations are required. With regard to the traverse of the rejection under U.S.C. 103 of claim 7, said traverse is based on the difference between the devices taught by Parkin and Dahlberg et al and therefore the above made comment on the overestimate by Applicant of said difference applies. Motivation, combinability as asserted by examiner have not been otherwise traversed on their merit. Traverse of claim 18 depends on that of claim 1. Therefore, the examiner has no alternative at this point to maintain the rejections as formulated in the office action of 12/04/2002 (Paper No. 5). However, the After-Final Amendment removes the objection to claim 8 and the modification of claim 18 only improves the language. Therefore, Amendment B has been entered (as Paper No. 6)